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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,812	12/29/2003	Gerald A. Hutchinson	APTLTD.043A	1883

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EXAMINER	
WEEKS, GLORIA R	
ART UNIT	PAPER NUMBER
3721	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	01/24/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/24/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/747,812	HUTCHINSON ET AL.	
	Examiner	Art Unit	
	Gloria R. Weeks	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *13 November 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,6-15,17-24 and 26-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,6-15, 17-24 and 26-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 6, 7, 10-13, 18, 19, 22 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettle (USPN 6,298,638) in view of Brown et al. (USPN 4,815,256).

In reference to claims 1, 6 and 7, Bettle discloses a manufacturing process comprising: blow molding (12) a preform having at least one layer and a neck portion (figure 2) into a flexible container, which can be defined as non-self-supportive when filled and placed on the open end of the neck portion; filling (14) the flexible container with a desired product; closing or capping (15) the filled container; wherein the neck portion of the perform is used to handle the preform throughout the process (column 1 lines 55-59). Bettle discloses discharging the flexible containers after the container has been filled and capped (column 4 line 66-column 5 line 2), wherein the discharged containers are packaged for shipment (column 1 lines 20-22). However, Bettle does not disclose whether the handling system directly discharges the flexible container into a container or to a subsequent handling system such as a conveyor belt or manual handling. Brown teaches a method of handling flexible containers (11) by their neck, conveying the containers by the neck through a filling and closing process, and subsequently depositing the container into a box (136). It would have been obvious to one having ordinary skill in the art at the time the invention was made modify the process of Bettle to include the step of placing the filled and capped flexible containers into a box, as suggested by Brown et al., for the purpose of removing the filled containers from the manufacturing system.

Applicant's limitation with respect to the pouch lacking self-support is not found to disclose a step or define an action of the claimed process. Furthermore, the idea of an article being self-supportive is contingent upon how the article is placed on a surface. A milk jug can be found to lack self-support if it was placed on its open end rather than it's bottom end. Nonetheless, Brown et al. and Bettle teaches that it is known in the art to handle multiple shaped containers by the neck during a manufacturing process.

In reference to claims 10-13, 18 and 19, Bettle discloses an apparatus for manufacturing and filling flexible pouches comprising: a handling system (30-33) preforms and/or flexible pouches through a blow molding machine (12), a filling machine (14), and a closing or capping machine (15) that closes a filled flexible pouch, and released the filled and capped pouches for shipment.

Applicant's limitation of a handling system that places the pouches into a container is not found to be a structural limitation of the handling system, rather a function of the handling system. The handling system of Bettle is found to be capable of depositing the pouch into a box, as, suggested by the handling system (21) of Brown et al, which includes neck gripping means, similar to that of Bettle, that convey a pouch via a neck portion, through a filling and closing station, and subsequently deposits the pouch into a box (136), for the purpose of facilitating removal of the filled containers from the system.

In reference to claims 22 and 26-28, Bettle discloses a manufacturing process comprising: placing a perform having at least one layer and a neck portion (figure 2) into a handling system (30, 32; column 4 lines 22-24); blow molding (12) the preform into a flexible container; filling (14) the flexible container with a desired product; closing or capping (15) the filled container; wherein the neck portion of the perform is used to handle the preform throughout the process (column 1 lines 55-59). Bettle discloses discharging the flexible containers after the container has been filled and capped

(column 4 line 66-column 5 line 2), but does not disclose further processing of the containers post discharge. Brown teaches a method of handling flexible containers (11) by their neck, conveying the containers by the neck through a filling and closing process, and subsequently depositing the container into a box (136). It would have been obvious to one having ordinary skill in the art at the time the invention was made modify the process of Bettle to include the step of placing the filled and capped flexible containers into a box, as suggested by Brown et al., for the purpose of shipping the filled containers removing the filled containers from the manufacturing system.

3. Claims 2, 3, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettle (USPN 6,298,638) in view of Brown et al. (USPN 4,815,256) as applied to claims 1 and 22, and further in view of Wakabayashi (USPN 3,818,785).

Regarding claims 2 and 3, Bettle discloses a process of manufacturing flexible containers, but does not disclose decorating and/or dressing the flexible containers. Wakabayashi teaches a process of manufacturing flexible containers including the steps of: blow molding (A) a preform into a flexible container; filling (I; column 2 lines 61-62) the flexible container with a desired product; and decorating (K) the flexible container after the container has been filled. It would have been obvious to one having ordinary skill in the art to modify the process of Bettle to include the step of decorating flexible containers, as suggested by Wakabayshi, for the purpose of disclosing information regarding the contents of the flexible container.

In reference to claims 23 and 24, Bettle discloses a process of manufacturing flexible containers, but does not disclose decorating and/or dressing the flexible containers. Wakabayashi teaches a process of manufacturing flexible containers including the steps of: blow molding (A) a preform into a flexible container; filling (I; column 2 lines 61-62) the flexible container with a desired product; and decorating (K) the flexible container after the container has been filled. It would have

been obvious to one having ordinary skill in the art to modify the process of Bettle to include the step of decorating flexible containers, as suggested by Wakabayshi, for the purpose of disclosing information regarding the contents of the flexible container.

4. Claim 8, 9, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettle (USPN 6,298,638) in view of Brown et al. (USPN 4,815,256) as applied to claims 1, 7, and 28, and further in view of Orinoco et al. (USPN 5,540,879).

With respect to claims 8 and 9, Bettle discloses a flexible container having at least one layer, but does not specifically disclose the composition of the layer(s) of the container. Orinoco et al. teaches a process of blow molding a perform into container, wherein the container includes at least one layer of polyethylene terephthalate (column 1 lines 29-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the process of Bettle to include the polyethylene terephthalate perform of Orinoco et al., since column 1 lines 29-42 of Orinoco et al. states that the use of such a material is well known in the art of blow molding flexible container, as the material is inexpensive and durable.

In reference to claims 29 and 30, Bettle discloses a flexible container having at least one layer, but does not specifically disclose the composition of the layer(s) of the container. Orinoco et al. teaches a process of blow molding a preform into container, wherein the container includes at least one layer of polyethylene terephthalate (column 1 lines 29-30). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the process of Bettle to include the polyethylene terephthalate perform of Orinoco et al., since column 1 lines 29-42 of Orinoco et al. states that the use of such a material is well known in the art of blow molding flexible container, as the material is inexpensive and durable.

5. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettle (USPN 6,298,638) in view of Brown et al. (USPN 4,815,256) as applied to claim 10, and further in view of Valyi (USPN 5,462,278).

With respect to claims 14 and 15, Bettle discloses an apparatus including a blow-molding machine and a filling machine, but does not disclose a decorating system upstream of the filling machine. Valyi teaches an apparatus including a blow-molding machine having a decorating system which decorates a preform prior to filling. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the blow-molding machine of Bettle, which is upstream of the filling machine, to include the decorating system of Valyi, since column 1 lines 49-53 of Valyi state that such a modification provides an economical and aesthetically pleasing container.

6. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bettle (USPN 6,298,638) in view of Valyi (USPN 4,305,772).

In reference to claims 10 and 17, Bettle discloses an apparatus for manufacturing and filling flexible pouches comprising: a handling system (30-33) that handles preforms and/or flexible pouches through a blow molding machine (12), a filling machine (14), and a closing or capping machine (15) that closes a filled flexible pouch, and released the filled and capped pouches for removal from the apparatus.

Applicant's limitation of a handling system that places the pouches into a container is not found to be a structural limitation of the handling system, rather a function of the handling system. Nonetheless, Valyi teaches a manufacturing apparatus including a handling system that handles flexible containers (40) by a neck portion (41), wherein the handling system includes a rigid container (50) placement system (51) prior to any filling of the flexible container (40; column 5 line 59-column 6 lines 3). It would have been obvious to one having ordinary skill in the art at the time of the invention

to modify the manufacturing apparatus of Bettle to include the rigid container placement system of Valyi prior to a filling station, since column1 line 64-column 2 line 7 of Valyi states that such a modification allows for a snug fit of a rigid container to the flexible container to ensure stability of the flexible container so that the flexible container can stand upright (column 1 lines 14-18).

Response to Arguments

7. Applicant's arguments with respect to claims 1-3, 6-24 and 26-30 have been considered but are not persuasive.

8. Applicant's first argument, with respect to claims 1 and 22, is that Brown does not teach or suggest the missing element of Bettle, particularly, depositing a flexible pouch in a box and thereafter releasing the flexible pouch from it's neck finish. The language of claim 1 that Bettle fails to disclose is "placing the filled pouch in a rigid container...wherein the perform and neck portion of the pouch are used to handle the perform and pouch throughout the process." Thus, the limitation on which Applicant's argument is based is not stated in the claim.

9. In response to applicant's argument that there is no suggestion to combine the references, for the rejection of claims 1 and 22, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art.[1] In this case, Brown discloses an apparatus including gripping means which handle a flexible pouch by it's neck portion, and releasing the neck portion of the flexible pouch to facilitate deposit of the flexible pouch into a rigid container (column 12, lines 55-57). As Bettle fails to disclose the method of means by which a flexible pouch is

[1] See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

removed from the apparatus, Examiner has relied upon the teaching of Brown for its disclosure of removing a flexible pouch from an apparatus, wherein upon release of a flexible pouch neck portion from a handling system, the flexible pouch is deposited within a rigid container.

Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.[2]

10. In response to applicant's argument, regarding claim 10, that Valyi II is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention.[3] In this case, Both Bettle and Valyi II have the common field of processing performs having neck portion, wherein the performs are blow-molded into containers which are further processed by handling the neck portion of the container[4].

Again, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.[5] There are no structural limitations claimed by Applicant's invention that patentable distinguish Applicant's invention over the prior art.

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[2] See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).
[3] See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).
[4] A sealed plastic or foil container used in packaging; something resembling a bag in shape.
[5] See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R. Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on M-F 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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